IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3017 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ISHWARBHAI MAGANBHAI DESAI & 2 - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR TS NANAVATI for Applicant(s) : 1 - 3.
Mr.K.P.Raval, A.P.P. for Respondent(s) : 1,
MR SV RAJU for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 10/04/2007

ORAL JUDGMENT

1. Rule. Learned A.P.P. Mr.K.P.Raval waives service of rule on behalf of the respondent-State.

2. Heard Mr.T.S.Nanavaty,learned Counsel for the applicants-accused, learned A.P.P.Mr K.P.Raval for the respondent-State and learned Counsel Mr. S.V. Raju for the original complainant.

3. This application for anticipatory bail has been preferred by the applicants apprehanding their arrest in connection with F.I.R I 135of 2007 which has been registered on 26-2-2007 with Navrangpur Police Station, Ahmedabad, for the alleged commission of offences under Sections 498-A and 114 of the Indian Penal Code , Sec.31 of the Domestic Violence Act and Secs. 4 and 7 of the Dowry Prohibition Act.

4. Learned Counsel for the applicants have submitted that the applicants, have preferred an application for bail under Section 438 of the Criminal Procedure Code before the lower Court which came to be rejected vide order dated 13-3-2007.

5. Learned Counsel Mr. Raju has strongly opposed this application and submitted that the applicant no.1 is a Senior Police Officer and so no action has been taken by the Investigation Officer even after long time since the filing of the complaint where serious allegations of cruelty and demand of dowry has been made. It is further his case that the marriage between the complainant and the accused no.1 Nitin had taken before two years and one daighter is born out of the wedlock, that the complainant had left her matrimonial home on account of torture meted

out to her by the applicants who are her in laws. Therefore, learned Counsel submitted that the application deserves to be dismissed.

This Court has minutely perused the papers of investigation as also the affidavit in replies filed by the complainant and the applicant no.1. The complaint discloses that the complainant has left the matrimonial home before four months of filing of the complaint, all allegations regarding cruelty and demand of dowry has been made before four months from the date of lodging of the complaint. She did not make any complaint before filing of the present complaint. After leaving the matrimonial home within four months no incident of cruelty or demand of dowry has taken place. The only allegation made by the complainant against her husband Nitin is that eight days back he had come to the house of her parents and abused her and gave kick blows. It is pertinent to note that the applicant no.1 is a Senior Police Officer and has worked as such at various places and at present he is serving at Himatnagar. The applicantno.2 is wife of the applicant no.1 and applicant no.3 is the daughter of the applicant no.1 and she is prosecuting her studies at present and both applicants nos.2 and 3 are residing at Ahmedabad. In that view of the matter, the applicants are easily available for interrogation and also during the course of trial. There is also no possibility of tampering with the evidence.

Thus,in light of the submissions made and the facts emerging from the set of papers of investigation tendered before the Court as stated above,and the manner in which the allegations are made in the complaint, the nature of offence and the sentence prescribed and also in view of the judgment rendered in the case of M.P.Lohia v. State of West Bengal and Anr. Reported in AIR 2005 SC 790, the application deserves to be allowed and is allowed.

In the event of arrest of the applicants in connection with F.I.R no.I 135 of 2007 of Navrangpura Police Station, they shall be released on bail in respect of offences alleged against them in this application on executing a bond of Rs.5000/-(Rupees five thousand only) with one surety of the like amount, by the concerned Police Officer and on condition that he shall:

(a) remain present before the trial Court regularly as and when directed on the dates fixed;
(b) make themselves available for interrogation by a Police Officer, whenever and wherever required;
(c) not directly or indirectly make any inducement threat or promise to any person acquainted with the facts of the case so as to dissuade from disclosing such facts to the Court or to any Police Officer;
(d) not to obstruct or hamper the police

investigation and not to play mischief with the evidence collected or yet to be collected by the police.

(e) at the time of execution of bond, furnish the residential address to the Investigating Officer and the Court concerned and shall not change his residence till the final disposal of the case or till further orders.

(f) not leave India without the permission of the Cour and if having passport, shall deposit the same before the trial Court within a week.

It would be open to the Investigating Officer to file an application for remand, if he considers it proper and just, and the concerned Magistrate would decide it on merits.

This order will hold good if the applicant is arrested any time within 90 days from today. This order for release on bail will remain operative only for a period of ten days from the date of his arrest. Thereafter, it will be open to the applicant to make a fresh application for being enlarged on bail in usual course which when it comes before the competent Court, will be disposed of in accordance with law, having regard to all the attending circumstances and the materials available at the relevant time uninfluenced by the fact that anticipatory bail was granted.

Rule is made absolute. Direct service is

permitted.

(M.D.Shah,J.)

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